

Benjamin L. Felcher Leavitt
Storch Amini & Munves PC
140 E. 45th St., 25th Floor
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MILAGROS IMPORTS LIMITED, a :
New York Corporation, :

Plaintiff, :

v. :

PROGRESS VANTAGE LIMITED, :
A Foreign corporation, :

Defendant. :

07-CV-3215 (SHS)
ECF Case

-----X
DECLARATION OF BENJAMIN L. FELCHER LEAVITT IN SUPPORT OF
DEFENDANT AND COUNTERCLAIM PLAINTIFF'S OPPOSITION TO
PLAINTIFF AND COUNTERCLAIM DEFENDANT MILAGROS IMPORTS
LIMITED MOTION FOR LEAVE TO AMEND ITS ANSWER TO
COUNTERCLAIM


I, Benjamin L. Felcher Leavitt, declare under the penalty of perjury, pursuant to
28 U.S.C. §1746, as follows:

1. I am counsel for Defendant and Counterclaim Plaintiff Progress Vantage Limited.
2. I had several discussions with Vanessa Power, counsel for Plaintiff and Counterclaim Defendant Milagros Imports Limited.
3. At no time, however, did I state that I believed Milagros would not be "ultimately successful" on a Statute of Frauds defense in this case.

4. Rather, during every conversation, I stated that there were no facts whatsoever that could support the application of the Statute of Frauds to this case. I continually stated that there was no legal basis for the affirmative defense.
5. I also told counsel that I had recently dealt with a case involving the application of the “performable within one year” subparagraph of the Statute of Frauds and that I was unaware of any cases supporting Milagros’ position. I asked counsel for defendant for some case law supporting, but prior to the filing of the motion to amend I did not receive any citations. No other Statute of Frauds provision was ever mentioned by counsel for Milagros.

Dated: March 19, 2008
New York, New York

STORCH AMINI & MUNVES PC


Benjamin L. F. Leavitt (BL 7363)
140 E. 45th St., 25th Floor
New York, New York 10017
(212) 490-4100
Fax: (212) 490-4208
Attorneys for Defendant and
Counterclaim Plaintiff Progress
Vantage Limited